

Introduced by Senator Escutia

February 15, 2000

An act to add Section 22962 to the Business and Professions Code, to amend Section 118950 of the Health and Safety Code, and to add Section 308.3 to the Penal Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1510, as introduced, Escutia. Tobacco products: tobacco sales.

Under existing law it is unlawful to sell tobacco products from a vending machine or appliance except vending machines located at least 15 feet from the entrance of a public premise licensed to sell alcohol.

This bill would impose a civil penalty for the sale of tobacco products by means of self-service display, as defined. This bill would require that retail sales of tobacco products must be a vendor-assisted and face-to-face sale, as defined. This bill would also require the State Department of Health Services to inspect tobacco retail establishments. This bill would specify that the provisions relating to self-service displays exclude tobacco product vending machines located at least 15 feet from the entrance of a public premise licensed to sell alcoholic beverages.

Under existing law it is unlawful to engage in the nonsale distribution of tobacco in public areas, as defined.

This bill would prohibit the nonsale distribution of tobacco on private property that is open to the general public, as defined. This bill would specify that the provisions relating to

the nonsale distribution of tobacco on private property that is open to the general public exclude locations where minors are prohibited by law and locations leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

Existing law imposes an infraction on a person who sells cigarettes that are not contained in a sealed and properly labeled package, as defined.

This bill would impose an infraction or civil penalty for the manufacturing, distribution, sale, or offering of a package of cigarettes that does not contain at least 20 cigarettes or a package of loose tobacco that does not contain at least 0.60 ounces of tobacco.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22962 is added to the Business
2 and Professions Code, to read:

3 22962. (a) The following definitions apply to this
4 section:

5 (1) "Face-to-face sale" means that the purchaser is in
6 the physical presence of the retailer or employee of the
7 retailer at the time of the sale. A face-to-face sale does not
8 include anonymous transaction methods such as mail
9 order, Internet, or telephone.

10 (2) "Self-service display" means the open display of
11 tobacco products in a manner that is accessible to the
12 general public without the assistance of the retailer or
13 employee of the retailer.

14 (3) "Vendor-assisted" means that access to tobacco
15 products requires the assistance of the retailer or
16 employee of the retailer.



1 (b) Except as permitted in subdivision (b) of Section
2 22960, it is unlawful for any person engaged in the retail
3 sale of tobacco products to sell, offer for sale, or display for
4 sale any tobacco product by self-service display. Each
5 retail sale of a tobacco product shall be a vendor-assisted,
6 face-to-face sale. Any person who violates this section is
7 subject to those civil penalties specified in the schedule
8 in subdivision (a) of Section 22958.

9 (c) It is a defense in any prosecution for a violation of
10 this section that the purchaser is 18 years of age or older
11 and his or her age is personally known by the defendant.

12 (d) The state department shall inspect tobacco retail
13 establishments for compliance with this section, but is not
14 required to conduct random inspections. Enforcement
15 proceedings brought by the state department shall be
16 conducted in accordance with Chapter 5 (commencing
17 with Section 11500) of Part 1 of Division 3 of Title 2 of the
18 Government Code. The Attorney General, a city
19 attorney, a county counsel, or a district attorney may
20 bring a civil action to enforce this section.

21 (e) This section does not preempt or otherwise
22 prohibit the adoption of a local standard that imposes
23 greater restrictions on the access to tobacco products
24 than the restrictions imposed by this section. To the
25 extent that there is an inconsistency between this section
26 and a local standard that imposes greater restrictions on
27 the access to tobacco products, the greater restriction on
28 the access to tobacco products in the local standard shall
29 prevail.

30 SEC. 2. Section 118950 of the Health and Safety Code
31 is amended to read:

32 118950. (a) The Legislature hereby finds and
33 declares the following:

34 (1) Smoking is the single most important source of
35 preventable disease and premature death in California.

36 (2) Smoking is responsible for one-quarter of all death
37 caused by fire.

38 (3) Tobacco-related disease places a tremendous
39 financial burden upon the persons with the disease, their

1 families, the health care delivery system, and society as a
2 whole.

3 (4) Despite laws in at least 44 states prohibiting the
4 sale of tobacco products to minors, each day 3,000
5 children start using tobacco products in this nation.
6 Children under the age of 18 consume 947 million
7 packages of cigarettes in this country yearly.

8 (5) The earlier a child begins to use tobacco products,
9 the more likely it is that the child will be unable to quit.

10 (6) More than 60 percent of all smokers begin smoking
11 by the age of 14, and 90 percent begin by age 19.

12 (7) Use of smokeless tobacco products among minors
13 in this state is increasing.

14 (8) Smokeless tobacco or chewing tobacco is harmful
15 to the health of individuals and may cause gum disease,
16 mouth or oral cancers, increased tooth decay and
17 leukoplakia.

18 (9) Tobacco product advertising and promotion are an
19 important cause of tobacco use among children. More
20 money is spent advertising and promoting tobacco
21 products than any other consumer product.

22 (10) Distribution of tobacco product samples and
23 coupons is a recognized source by which minors obtain
24 tobacco products, beginning the addiction process.

25 (11) It is the intent of the Legislature that keeping
26 children from beginning to use tobacco products in any
27 form and encouraging all persons to quit tobacco use shall
28 be among the highest priorities in disease prevention for
29 the State of California.

30 (b) It is unlawful for any person, agent, or employee
31 of a person in the business of selling or distributing
32 smokeless tobacco or cigarettes from engaging in the
33 nonsale distribution of any smokeless tobacco or
34 cigarettes to any person in any public building, park or
35 playground, or on any public sidewalk, street, or other
36 public grounds, *or on private property that is open to the*
37 *general public.*

38 (c) For purposes of this section:

39 (1) “Nonsale distribution” means to give smokeless
40 tobacco or cigarettes to the general public at no cost, or

1 at nominal cost, or to give coupons or rebate offers for
2 smokeless tobacco or cigarettes to the general public at
3 no cost or at nominal cost. Distribution of tobacco
4 products or coupons or rebate offers in connection with
5 the sale of another item, including tobacco products,
6 cigarette lighters, magazines, or newspapers shall not
7 constitute nonsale distribution.

8 (2) “Smokeless tobacco” means (A) a loose or flat,
9 compressed cake form of tobacco that may be chewed or
10 held in the mouth or (B) a shredded, powdered, or
11 pulverized form of tobacco that may be inhaled through
12 the nostrils, chewed, or held in the mouth.

13 (3) “Public building, park, playground, sidewalk,
14 street, or other public grounds” means any structure or
15 outdoor area that is owned, operated, or maintained by
16 any public entity, including, but not limited to: city and
17 county streets and sidewalks, parade grounds, fair
18 grounds, public transportation facilities and terminals,
19 public reception areas, public health facilities, public
20 recreational facilities, and public office buildings.

21 (4) *“Private property that is open to the general*
22 *public” means any structure or outdoor area available for*
23 *entry or use that is owned, operated, or maintained by*
24 *any private entity, whether or not a fee or charge is*
25 *required for entry or use.*

26 (d) Any person who violates this section shall be liable
27 for a civil penalty of not less than two hundred dollars
28 (\$200) for one act, five hundred dollars (\$500) for two
29 acts, and one thousand dollars (\$1,000) for each
30 succeeding violation. Each distribution of a single
31 package, coupon, or rebate offer to an individual member
32 of the general public in violation of this section shall be
33 considered a separate violation.

34 (e) ~~Nothing contained in this section or~~ *Neither this*
35 *section nor* any other provision of law shall invalidate an
36 ordinance of, or ~~be construed to prohibit~~ *prohibits* the
37 adoption of an ordinance by, a city or county regulating
38 distribution of smokeless tobacco or cigarette samples
39 within its boundaries that is more restrictive than this
40 section. ~~If this occurs, the more restrictive local ordinance~~

~~shall control~~—*The provisions of an ordinance that imposes greater restrictions on the sale or distribution of tobacco than this section shall govern, to the extent of any inconsistency between it and this section.*

(f) This section shall not apply to any public building, park, playground, sidewalk, street, or other public grounds, *or any private property that is open to the general public* where minors are prohibited by law. This section also shall not apply to any public building, park, playground, sidewalk, street, ~~or~~ other public grounds, *or any private property that is open to the general public* leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

SEC. 3. Section 308.3 is added to the Penal Code, to read:

308.3. (a) A person, firm, corporation, or business may not manufacture for sale, distribute, sell, or offer to sell any cigarette, except in a package containing at least 20 cigarettes. A person, firm, corporation, or business may not manufacture for sale, distribute, sell, or offer to sell any loose tobacco, except in a package containing at least 0.60 ounces of tobacco.

(b) Any person, firm, corporation, or business that violates this section is liable for an infraction, or in an action brought by the Attorney General, a district attorney, a county counsel, or a city attorney for a civil penalty of two hundred dollars (\$200) for the first violation, five hundred dollars (\$500) for the second violation, and one thousand dollars (\$1,000) for each succeeding violation.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

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